IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.2.2006

CORAM:

THE HONOURABLE MR.JUSTICE C.NAGAPPAN

C.R.P.(PD).No.657 of 2004

R.Ravindran .. Petitioner

-Vs-

M.Rajamanickam . Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India against the order and decretal order of the learned Subordinate Judge, Tiruvarur, dated 29.12.2003 made in O.S.No.47/2002 now pending as O.S.No.34/2004 on the file of the District cum Sessions Court, Nagapattinam.

For petitioner : Mr.AR.L.Sundaresan

For respondent : Mr.K.V.Subramanian
Senior Counsel
for M/s.Abdul Wahab

ORDER

The petitioner has sought for setting aside the order dated 29.12.2003 made in O.S.No.47 of 2002 on the file of Sub-Court, Tiruvarur. The revision petitioner is the plaintiff in the suit.

2. The suit is filed for recovery of a sum of Rs.5,38,000/- with subsequent interest and costs from the respondent herein/defendant. The case of the plaintiff is that the defendant borrowed two loan amounts of Rs.2,00,000/- each from the plaintiff and failed to repay the same and the suit claim is the balance outstanding in the transaction.

3. During the trial of the case, the plaintiff sought for marking Plaint document Nos.1 and 2 as exhibits on his side and that was objected to by the defendant on the ground that the documents are inadmissible in evidence. The Trial Court in the impugned order held that both the documents are promissory notes payable otherwise than on demand and as the documents were insufficiently stamped, they are inadmissible as per Section 35 of the Stamp Act and cannot be marked as exhibits. Challenging that order, the present revision is preferred.

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4. The learned counsel for the petitioner contends that Plaint document Nos.1 and 2 stipulate six months time for payment of monies under the documents and they ceased to be promissory notes since there is no unconditional undertaking to pay on demand and hence the impugned order is liable to be set aside.

5. Per contra, the learned Senior counsel appearing for the respondent contends that though Plaint document Nos.1 and 2 specified a period of six months for repayment, it cannot be said that the payment is conditional and the documents contain an unconditional undertaking to pay and therefore they are promissory notes payable otherwise than on demand and since they are insufficiently stamped, they are inadmissible in evidence as stipulated under Section 35 of the Stamp Act and the Trial Court has rightly refused to mark them as Exhibits in the case. In support of his contention, the learned Senior Counsel relies on the decision of the Division Bench of this Court in THENAPPA CHETTIAR v. ANDIYAPPA CHETTIAR (1971 (I) MLJ 214).

6.The Plaint document Nos.1 and 2 contain the very same recitals and for the purpose of appreciation, Plaint document No.1 is reproduced below:

> **"என்னால், நாளது தேதியில் தங்களிடமிருந்து எனது குடும்ப நிர்வாக அபிவிருத்தி செலவிற்காக கடனாக ரொக்கமாக பெற்றுக் கொண்டது ரூ.2,00,000./ இந்த ரூபாய் இரண்டு இலட்சத்துக்கும் நாளது தேதியிலிருந்து மாதம் ஒன்றுக்கு ரூ.100./க்கு ரூ.1./ (ஒரு ரூபாய்) வீதம் வட்டி செலுத்தி வந்து, நாளது தேதியிலிருந்து ஆறு மாத காலக் கெடுவிற்குள் தங்களிடமோ அல்லது தங்களது உத்தரவு, பெற்றவரிடமோ கொடுத்து தீர்த்து விடுகிறேன் என இதன் மூலம் உறுதி கூறி இந்த உறுதிமொழிக் கடன் பத்திரம் எழுதிக் கொடுத்தேன்."**

It is engrossed on a Ten Rupees non-judicial stamp paper.

7. The question to be considered is whether the instruments are promissory notes for the purpose of the Stamp Act. "Promissory note" is defined under Section 2(22) of the Stamp Act as one defined by the Negotiable Instruments Act, 1881. Section 4 of the Negotiable Instruments Act defines "Promissory note" thus:

> "A "promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to,

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> or to the order of, a certain person, or to the bearer of the instrument."

Paragraph 2 of Section 5 of the Negotiable Instruments Act is relevant and reads thus:

> "A promise or order to pay is not "conditional" within the meaning of this section and section 4, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain."

8. A combined reading of the above provisions makes it clear that though the amount in instrument is payable within a period of six months, it cannot be said that the payment is conditional within the meaning of Section 4 of the Negotiable Instruments Act. The Plaint documents 1 and 2 contain an unconditional undertaking to pay and therefore they are promissory notes within the definition of the Negotiable Instruments Act. Since time for payment was specified, it cannot be said that they are payable on demand and when payable otherwise than on demand, the documents fall under Article 49(b) of Schedule I to the Stamp Act and the proper stamp duty to be paid would be the same duty as a bill of exchange for the same amount payable otherwise than on demand. The value of the Plaint documents is Rs.2 lakhs each and the stamp duty to be paid is five rupees for the first one thousand rupees and for every additional Rs.1,000/- or part thereof in excess of Rs.1,000/- is five rupees each. Hence there is no proper stamp duty for Plaint documents 1 and 2.

9. The Division Bench of this Court in the decision, referred to above, construed a document, which is similar to the present ones and concluded that the document contained an unconditional undertaking to pay and therefore it is a promissory note and since it specified two years period for repayment it is payable otherwise than on demand and falls under Article 49(b) of Schedule I of Stamp Act and as the document was insufficiently stamped, in view of the proviso to Section 35 of the Stamp Act, it would be inadmissible for any purpose. The above decision is squarely applicable to the facts of the present case.

10. The Plaint documents 1 and 2 are promissory notes payable otherwise than on demand and there is no proper stamp duty. In view of the proviso to Section 35 of the Stamp Act,

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those documents cannot be validated by payment of penalty and the documents are inadmissible in evidence for any purpose.

11.There are no merits in the civil revision petition and the same is dismissed. No costs.

vks

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Subordinate Judge,
Tiruvarur.

2.The District cum Sessions Court,
Nagapattinam.

+ one cc to Mr.M.A.Abdul Wahab, Advocate Sr.No.7990.
+ one cc to Mr.AR.L.Sundaresan, Advocate Sr.No.785.

AK (CO)
RSM/01/03/2006

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